

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Bail Application No.S-805 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

Syed Faiz Ahmed Shah, Advocate for the applicant.
Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.
Mr. Ali Murtaza Babar, Advocate for the complainant.

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Date of hearing: 04.10.2021
Date of decision: 08.10.2021

ORDER

KHADIM HUSSAIN TUNIO, J.- This is an application under section 497 Cr.P.C filed on behalf of the applicant praying for his release on bail in case emanating from Crime No. 64 of 2021, for offence punishable under sections 365-B, 496-A, 343 P.P.C, registered at P.S. B-Section Dadu. The applicant had earlier approached the learned Trial Court with the plea to enlarge him on bail but same was declined by the learned Additional Sessions Judge-IV, Dadu vide his order dated 08.09.2021.

2. The brief facts of the case as unfolded in F.I.R are that present applicant demanded the hand of complainant's daughter Mst. Waheedan for his son Rashid Jamali but she refused him. On 04.08.2021 at about 11:15 p.m. present applicant accompanying with co-accused being armed with Guns and Rifles entered in the house of complainant and forcibly abducted her daughter Mst. Waheedan in a datson and went away, for that present case was registered.

3. Learned counsel for applicant has contended that F.I.R is delayed by two days for which no plausible explanation has been furnished by the complainant; that alleged incident is said to have taken place at about 11:15 p.m. which is night time but no source of identification of the accused is given by the complainant party; that Investigating Officer recorded statement under section 161 Cr.P.C of alleged abductee Mst. Waheedan on 10.08.2021 wherein it has been stated that no accused has committed Zina with her, therefore, it is also not clear that section 365-B P.P.C actually is made or 365 P.P.C; that admittedly no incriminating articles have been recovered from possession of applicant and that there is dispute between the parties over matrimonial affairs, as such, false implication of

applicant cannot be ruled out. In support of his contentions, learned counsel has placed reliance on the cases of *Muhammad Farooq Vs. The State* [2003 YLR 2548], *Shaukat Vs. The State* [2008 MLD 1430], *Suhail Vs. The State and another* [2009 P Cr. L J 312], *Muhammad Ishaq Vs. The State and another* [2011 YLR 781], and *Kashif Vs. The State and another* [2021 MLD 493].

4. Learned Assistant Prosecutor General Sindh and counsel for complainant in one voice have opposed the release of the applicant on bail by contending that name of applicant is mentioned in F.I.R with specific role assigned to him; that alleged abductee while recording her statement implicated present applicant with commission of offence. They lastly pray that the applicant is not entitled for his release on bail.

5. I have heard the learned counsel for the respective parties and have gone through the record. A tentative assessment of the record pertains that the FIR of the incident was lodged with due promptness and the delay was explained by the complainant. Besides, the delay in the instant circumstances would barely affect the merits of the case as usually in cases involving abduction of women folk, aggrieved families try to resolve the matter on their own at first to save themselves from the unfortunate humiliation that the society leaves for them and to safeguard their honour, therefore the delay when adjudged with other surrounding circumstances holds little to no weight. It has also been observed by the Hon'ble Apex Court in the case titled *Haji Guloo Khan v. Gul Daraz Khan and others* (1995 SCMR 1765) that benefit of delay in lodging the FIR goes to the accused and **could be** taken into consideration **along with other circumstances**, while deciding the bail application, however such delay alone is never a sufficient ground for grant of bail in a case carrying capital punishment. It is a matter of record that the abductee Mst. Waheedan was recovered from the possession of the present applicant and when her 161 Cr.P.C statement was recorded, she fully implicated the applicant for her kidnapping and supported the version of events that was furnished by the complainant, prima facie establishing the involvement of the applicant in the present case. It is pertinent to note here that S. 365-B PPC provides a punishment of imprisonment for life and therefore falls within the ambit of prohibitory clause of S. 497 Cr.P.C. The parties are known to each other as the applicant had asked for the victim's hand for marriage to which she had refused and this infuriated him and that in turn led to the incident taking place, thereby providing motive and the present case does not appear to be one of mistaken identity either. Sufficient material is available on

the record to connect the applicant with the commission of the offence which carries punishment of life imprisonment. Only a tentative assessment of the record can be made at bail stage and deeper appreciation of evidence is to be avoided at all costs lest it may prejudice the trial. In this respect, reliance is placed on the case law reported as *Bilal Khan v. The State through P.G, Punjab and another (2020 SCMR 937)*. As far as the false implication of the applicant on the basis of enmity over matrimonial affairs is concerned, suffice it to say that enmity is a double edged sword that cuts both ways and where it can furnish a reason for false implication; it can also prove to be a good motive for the commission of offence. Even otherwise, it would seem quite unreasonable to believe that the complainant would falsely implicate someone for the kidnapping of his own daughter.

6. More so, it is a settled principle of law that bail in cases of commission of non-bailable offences and particularly those falling within the Prohibitory Clause of S. 497 Cr.P.C. and carrying capital punishment is not to be granted as a matter of course with a simple sentence that it is a case of further inquiry as alleged by the counsel for applicant, without keeping in view the entire provisions of Section 497 Cr.P.C. Under the circumstances, there is enough material to constitute a reasonable ground connecting the accused with the alleged offence, the Courts are always slow to accede to the request for bail. Per record, the co-accused is also an absconder and therefore, it is reasonable to apprehend the same from the present applicant after grant of bail to him.

7. For what has been discussed above, the applicant has miserably failed to make out a case for the grant of post-arrest bail and resultantly, instant criminal bail application is dismissed.

8. Needless to mention here that the observations made here and above are tentative in nature and shall not in any way affect the merits of case of either party at the trial and / or influence the mind trial Court at the time of deciding the case finally.

JUDGE